

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2826 of 1998

For Approval and Signature:

Hon'ble THE ACT.C.J. MR K.G.BALAKRISHNAN

and

MR. JUSTICE J.M. PANCHAL

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

JIVABHAI JORABHAI RABARI

Appearance:

MR KAMAL MEHTA, A.G.P. for Petitioner

NOTICE SERVED BY DS for Respondent No. 1

CORAM : THE ACT.C.J. MR K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

Date of decision: 02/07/98

ORAL JUDGEMENT

(Per : K.G.Balakrishnan, Actg.C.J.) :-

This Special Civil Application is filed by the State challenging the order passed by the Civil Judge (S.D.) at Palanpur in Regular Civil Suit no.327/94. The said suit was instituted by the respondents herein challenging land acquisition proceedings initiated by the State Government to acquire land for formation of irrigation canal. The respondents as plaintiffs had prayed that no land should be acquired on the left bank of Mukteshwar Irrigation Project. They also sought for a declaration that the notification issued under section 4 of the Land Acquisition Act be null and void. The learned Civil Judge had initially held that the Civil Court had no jurisdiction to entertain the said suit. Aggrieved by the same, the respondents preferred an appeal before the District Court at Palanpur. The appellate Judge directed the Civil Judge to consider the question of jurisdiction and an interim order was passed directing the parties to maintain status-quo. The petitioner- State filed Civil Appeal and the learned Single Judge of this Court directed the Assistant Judge, Palanpur to expedite the hearing of Regular Appeal and dispose of it. The appellate Judge had thereafter set aside the order passed by the Trial Judge and the matter was remanded. Thereafter, by the impugned order the Trial Judge held that the Civil Court had jurisdiction to entertain the suit. Aggrieved by the same, present Special Civil Application is filed.

2. We heard Mr. Kamal Mehta, Assistant Government Pleader and Mr. S.V.Raju, learned Counsel for the respondents.

3. Learned Counsel for the respondents contended that the plaintiffs have challenged land acquisition proceedings on the ground that if the Canal is constructed on the basis of the present alignment, it would cause hardship and nuisance to the respondents. It was submitted that the plaintiffs are not owners of the land nor their property is acquired for the purpose of Canal and as the plaintiffs have no remedy under the Land

Acquisition Act to challenge the acquisition proceedings, they have got right to file Civil Suit.

4. Learned Assistant Government Pleader on the other hand submitted that the Supreme Court in M/s.K.S.Venkataraman and Co.(P) Ltd. vs. State of Madras, A.I.R. 1966 S.C. 1089 has held that the acquisition proceedings cannot be challenged before Civil Court and remedy open to the aggrieved party is as per the provisions contained in the Land Acquisition Act.

5. The plaintiffs in the suit averred that their property is not acquired and the acquisition was not for any public purpose. Their contention is that originally the proposal was to construct irrigation canal at different area of the village and when the construction work was started, the owners of such lands who were powerful and influential, interfered with the construction work and the Government was forced to change the alignment of the Canal and no acquisition proceedings were initiated. According to the plaintiffs, the Canal is now proposed to be constructed through the middle of the village causing serious hardship to the villagers. It was submitted that there is a Primary School in the vicinity and the Canal passes through the School compound which would cause nuisance and hazard to the school children.

6. It is pertinent to note that Section 4 notification was published on 25.5.1994. Thereafter the award was passed and payment has already been made in certain cases. The question for consideration is whether the plaintiffs have right to challenge the acquisition proceedings by filing a civil suit. This question was considered by the Supreme Court in LAXMI CHAND AND OTHERS v. GRAM PANCHAYAT, KARARIA AND OTHERS, A.I.R. 1996 S.C. 523. In that case the notification under section 4 of the Land Acquisition Act was published for acquisition of land for construction of a School. A writ petition was filed against the acquisition proceedings and the same was dismissed. Later on, award was passed. The validity of the acquisition proceedings and the award was challenged by filing Civil Suit. The Civil Court on a preliminary issue held that the suit was not maintainable. That decision was upheld by the High Court. The same was challenged before the Supreme Court. Therein the Supreme Court observed as under :-

"The procedure contemplated under the Act is a special procedure envisaged to effectuate public

purpose, compulsorily acquiring the land for use of public purpose. The notification under section 4 and declaration under section 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made under section 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference under section 18 and a further appeal under section 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated under Section 48 requires to be adhered to. If possession is taken, it stands vested under section 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition. It would just be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognisance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz. the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restriction on their exercise of extraordinary power. Barring thereof, there is no power of the Civil Court."

7. Learned Counsel for the respondents brought to our notice the decision reported in A.I.R. 1969 S.C. 78 Dhulabhai etc. vs. State of Madhya Pradesh and another wherein the Supreme Court elaborately considered the question of jurisdiction. In the said case, Supreme Court held that where the statute gives a finality to the orders of the special tribunals, the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. It is observed that if the statute provides a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, then the Civil Court's jurisdiction is

excluded and questions of the correction of orders like assessment cannot be challenged before Civil Court. It has been expressed that the only circumstance under which the Civil Court may acquire jurisdiction is where the provisions of the particular Act have not been complied with or where statutory tribunal has not acted in confirmity with the fundamental principles of judicial procedure. We do think that law laid down by the Supreme Court has any application to the present case, as the plaintiffs do not allege that there was clear violation of the fundamental principles of procedure laid down under the Land Acquisition Act in acquiring this land. We have also noted that the remedy provided under the Land Acquisition Act is efficacious for the party aggrieved by the acquisition proceedings.

8. Counsel for the respondents relied on the decision reported in A.I.R. 1963 S.C. 1890, Valjibhai Muljibhai Soneji and another vs. The State of Bombay and others. Based on the above decision, we think that if the authority has acted in colourable exercise of powers, then Civil Court will have jurisdiction to deal with such suit. It has been held that in respect of a declaration made by the Government as to public purpose of the acquisition of land, the question whether the action of the Government can be regarded as colourable exercise of power or mala fide is one of facts. It is further observed that if the authorities have exercised their power mala fide, it is open to the aggrieved person to file civil suit.

9. In the plaint filed by the respondents, no averments have been made to the effect that the acquisition proceedings are done as mala fide exercise of power. Their only contention is that the selection of land was taken without taking into consideration the public interest and without making any proper survey. The acquisition proceedings must have been finalised after making inquiry regarding the necessity of such project and the public purpose also must have been taken into consideration by the authorities.

10. The respondents' Counsel also contended that this being a Special Civil Application filed against the order passed by the Civil Judge regarding jurisdiction, this Court may not entertain the Special Civil Application, as the petitioners have got other efficacious remedy. The acquisition proceedings were initiated in 1994 for public purpose and the suit was filed in the same year and all proceedings are stayed. In view of the clear decision of the Supreme Court, Civil Court has no jurisdiction.

Therefore, if the proceedings of the suits are continued, the public cause would suffer. In such circumstances, this Court is perfectly justified in invoking the extraordinary jurisdiction conferred under Article 226 of the Constitution. We hold that the order passed by the Civil Court is without jurisdiction and the same is hereby quashed. The Special Civil Application is allowed. Rule is made absolute, with no order as to costs.

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(patel)